

Internal Revenue Service
District Director

Department of the Treasury

Post Office Box 1680, GPO
Brooklyn, NY 11202

Date: APR 19 1989

Person to Contact:

Contact Telephone Number:

Refer Reply to:

CERTIFIED MAIL

Dear Applicant:

We have considered your application for tax-exempt status under section 501(c)(3) of the Internal Revenue Code.

The evidence disclosed that you were incorporated on [REDACTED] in the State of [REDACTED].

The purposes for which the corporation was formed are as follows:

- a. To unite those persons engaged in businesses or professions, as tenants or landlord, in [REDACTED].
- b. To promote the welfare of its members.
- c. To promote [REDACTED].
- d. To advertise, promote and develop the business of members and [REDACTED] through available means.
- e. When appropriate to advise and consult with the management of [REDACTED] to resolve problems which affect the interests of members.
- f. To promote a business atmosphere at [REDACTED].

An organization is organized exclusively for one or more exempt purposes only if its articles of organization limit the purposes of such organization to one or more exempt purposes and its assets are permanently dedicated to exempt purposes. An organization must meet both the organizational and operational tests to be exempt under section 501(c)(3) of the Code. The purposes of this organization do not meet the organizational requirements in section 1.501(c)(3)-1(b) of the Income Tax Regulations and your dissolution provision does not satisfy the provisions of I.T. Regs. 1.501(c)(3)-1(b)(4). Accordingly your organization fails the organizational test and is not entitled to exemption under 501(c)(3). Your organization also fails the operational test of section 501(c)(3).

[REDACTED]

Based on the information submitted, your primary activity will be advertising and the promotional activities designed to increase the sale of merchandise or services by Association members. The Association schedules print and radio advertising for institutional/image-making ads and for seasonal events. Christmas, Anniversary Sales, Easter, Mother's Day, etc. Posters, flyers and a catalog of [REDACTED] stores have also been produced to promote sales and activities. Musical events, concert series, art openings are sponsored throughout the year, and are free to the public. The organization is financed entirely from membership dues. Membership is open to any person having, by reason of being a tenant under written lease, a regular and current operating place of business at least 50 square feet in size as a retail seller within [REDACTED], [REDACTED]. Most of the organizations' receipts are spent on advertising.

Section 501(c)(3) of the Code provides, in part, for the exemption from Federal income tax of organizations organized and operated exclusively for charitable, religious, scientific or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

In order to qualify under IRC 501(c)(3), an organization must be both "organized" and "operated" exclusively for one or more purposes specified in that section. If the organization fails to meet either the organizational test or the operational test, it is not exempt. (Regs. 1.501(c)(3)-1(a)(1)). The organizational test relates to the rules for governing an organization and the purposes stated in its articles of organization. The operational test relates to the organization's activities.

Section 1.501(c)(3)-1(c)(1) of the Regulations states that if more than an insubstantial part of an organization's activities is not in furtherance of exempt purposes, the organization will not be regarded as exempt.

In Better Business Bureau v. U.S., 326 U.S. 279 (1945), the Supreme Court stated that the presence of even a single, non-exempt purpose, if more than insubstantial in nature, will defeat exemption under Section 501(c)(3) of the Code, regardless of the manner or importance of the truly exempt purposes.

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations provides, in part, that an organization is not organized or operated exclusively for one or more of the purposes mentioned in section 501(c)(3) of the Code unless it serves a public rather than a private interest. An organization may not be exempt if it is operated for the benefit of private individuals.

Section 1.501(c)(3)-1(b)(4) of the Regulations states that "an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose... An organization's assets will be considered dedicated to an exempt purpose, for example, if upon dissolution, such assets would, by reason of a provision in the organization's articles or by operation of law, be distributed for one or more exempt purposes, or to the Federal government, or to a State or local government, for a public purpose, or would be distributed by a court to another organization to be used in such manner as in the judgment of the court will best accomplish the general purposes for which the dissolved organization was organized. However, an organization does not meet the organizational test if its articles or the law of the State in which it was created provide that its assets would, upon dissolution, be distributed to its members or shareholders."

Revenue Ruling 77-111, 1977-1 C.B. 144 describes an organization in situation 1 whose primary purpose is to increase business patronage in a deteriorated area. It achieves this purpose by presenting television and radio advertisements describing the advantage of shopping in the area, by operating a telephone service providing information to prospective shoppers on transportation and accommodations in the area, and by informing the new media on the area's problems and potential. These activities are performed to promote business rather than to accomplish exclusively 501(c)(3) objectives, and are not exempt under section 501(c)(3) of the Code.

Like the organization described in Revenue Ruling 77-111, your organization's primary purpose is to further business rather than the 501(c)(3) purposes. The members of the Association are the primary recipients of the organization's benefits. These benefits include advertising and promotional activities designed to increase the sale of merchandise or services by Association members. This is not a charitable purpose or any other exempt purpose as stated in section 501(c)(3) of the Code. The organization also fails the organizational test, since its purposes are broader than those within section 501(c)(3) of the Code.

Should your organization successfully appeal this determination the effective date of exemption would be [REDACTED], the date the IRS received a completed application. Exemption would not be granted to inception since your organization failed to file within the time prescribed by section 508(a) of the Internal Revenue Code.

[REDACTED]

Accordingly, we conclude that you do not meet the requirements for exempt status under section 501(c)(3) of the Code and propose to deny your request for exemption under that section.

You are required to file a taxable return Form 1120 or 1041 with the District Director of Internal Revenue Service. Please send the return to the Internal Revenue Service, P.O. Box 1680, General Post Office, Brooklyn, NY 11202.

Contributions made to you are not deductible by the donors as charitable contributions as defined in section 170(c) of the Code.

If you do not agree with this determination, you may request a Conference with the Regional Director of Appeals by protesting in accordance with the enclosed instructions within 30 days.

Protests submitted which do not contain all the documentation stated in the instructions will be returned for completion.

If we do not hear from you within that time this determination will be considered final and the appropriate State Officials will be notified.

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part that "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

" Sincerely yours,

[REDACTED]
District Director

Enclosure: Publication 892